REMARKS/ARGUMENTS

This Amendment and the following remarks are intended to fully respond to the Office Action mailed January 3, 2007. In that Office Action, claims 1-3, 5-7, 9-13 and 15-23 were examined, and all claims were rejected. More specifically, claims 1-3, 5-7, 9-13, and 15-23 stand rejected under 35 U.S.C. § 101, because the claimed invention is directed to non-statutory subject matter; claims 1, 6, and 12 stand rejected as not being statutory in view of the cited MPEP section 2106. Reconsideration of these rejections, as they might apply to the original and amended claims in view of these remarks, is respectfully requested. Please note, page 3 of the Office Action states, "claims 1-8 and 11-72 are rejected." The Applicant believes the examiner intended to state that all pending claims (1-3, 5-7, 9-13, and 15-23) stand rejected. Claims 4, 8, and 14 are cancelled in applicant's reply filed on 10/17/06. Claim 7 is cancelled in this reply. Thus, now only claims 1-3, 5, 6, 9-13, and 15-23 remain in the application.

The Examiner states that claims 1-3, 5-7, 9-13, and 15-23 have subject matter allowable over the prior art of record pending resolution of the 35 U.S.C. § 101 claims rejection.

The amendments submitted above to certain claims have been done so either in response to the Examiner's rejections or objections or to correct claim dependency, to correct antecedent basis, to correct inconsistent claim element names, to put the claim in conventional form, to correct punctuation, spelling, improper word usage, and the like.

Claims 1 and 6 were amended for clarification. More specifically, if the properties of two nodes do match then it is the *matching* node which is omitted from the act of creation (see page 5, line 25 through page 6, line 6 in the specification).

Claim 3 was amended to correctly indicate the antecedent basis of a claim element ("record" should be "the record").

Claim 6 was amended to correctly indicate a new claim element ("load module" should be "a load module").

Claim 6 was also amended to correctly indicate the antecedent basis of a claim element ("an XML payload node tree" should be "the XML payload node tree").

Claim 6 was also amended to correct punctuation by adding a missing semicolon("tree" should be "tree;").

Claim 7 has been cancelled because the claim elements of claim 7 now appear in parent claim 6.

Claims 10, 11, 17, and 23 were amended to correct/change their dependence upon a cancelled claim/different claim.

Claims 10, 11, and 17 were amended to remove claim elements that now appear in a parent claim.

Claim 13 was amended to correctly indicate the antecedent basis of a claim element ("another record" should be "said another record" and "next another record" should be "said another record").

Claim 16 was amended to delete the word "and" from the beginning of a paragraph.

Claim 16 was amended to correctly indicate the antecedent basis of a claim element ("more records" should be "said more records" and "each record" should be "each of said more records").

Claim 23 was amended to make the claim a dependent method claim instead of a dependent apparatus claim.

No new matter has been introduced through any of these claim amendments.

Claim Rejections – 35 U.S.C. § 101

Claim 1-3, 5-6, 9-13, and 15-23 stand rejected under 35 U.S.C. § 101 as being directed toward non-statutory subject matter. In response, Applicant has cancelled claim 7 rendering the rejection moot as to this claim. Applicant has also amended independent claims 1, 6, and 12 to more distinctly distinguish Applicant's invention through the further limitations of:

Claim 1:   "generating the XML payload from the XML payload node tree"

Claim 6: "a build module for building the XML payload from the XML payload node tree"

Claim 12: "building the XML payload from the node tree"

Support for these amendments may be found in the specification on page 1, lines 21-25; page 6, lines 20-23; page 15, lines 4-7; and in reference to FIGS. 1 and 6. Claims 1 and 12 are independent method claims that claim a process for generating or building an XML payload from an XML list independent of the schema associated with the XML list. Beginning with input data in an XML list, shown in exemplary fashion as a spreadsheet in FIG. 4, intermediate steps are performed that result in the generating or building of an XML payload, shown in exemplary fashion in FIG. 6. Independent system claim 6 claims a system for generating an XML payload from an XML list. Beginning with input data in an XML list, shown in exemplary fashion as a spreadsheet in FIG. 4, a plurality of modules are provided that transform the XML list into the XML payload, shown in exemplary fashion in FIG. 6.

Applicant believes that independent claims 1, 6, and 12, as amended, are statutory under 35 U.S.C. § 101 as being directed to a process (claims 1 and 12) and to a machine, manufacture, or composition of matter (claim 6) and, accordingly, Applicant requests retraction of the Examiner's rejection of these claims.

Claims 2, 3, 5, 9-11, 13, and 15-23 depend directly or indirectly from independent claims 1, 6, or 12 and include all the elements and limitations thereof. As a result, and in light of the foregoing remarks concerning independent claims 1, 6, and 12, Applicant likewise believes that claims 2, 3, 5, 9-11, 13, and 15-23 also overcome the Examiner's rejection under 35 U.S.C. § 101, and withdrawal of that rejection in respect to these claims is respectfully requested.

In the alternative, even if amended claims 1, 6, and 12 fall within a judicial exception to 35 U.S.C. § 101 (laws of nature, natural phenomena, and abstract ideas), Applicant believes that the claims are directed towards a practical application of a judicial exception.

MPEP § 2106 IV C 2 states that:

"A claimed invention is directed to a practical application of a 35 U.S.C. 101 judicial exception when it:

(A) "transforms" an article or physical object to a different state or thing; **or**

(B) otherwise produces a useful, concrete and tangible result, based on the factors discussed below."

MPEP § 2106 IV C 2 (2) states that:

"For purposes of an eligibility analysis, a physical transformation "is not an invariable requirement, but merely one example of how a mathematical algorithm [or law of nature] may bring about a useful application." *AT&T*, 172 F.3d at 1358-59, 50 USPQ2d at 1452. If USPTO personnel determine that the claim does not entail the transformation of an article, then USPTO personnel shall review the claim to determine it produces a useful, tangible, and concrete result. In making this determination, the focus is not on whether the steps taken to achieve a particular result are useful, tangible, and concrete, but rather on whether the final result achieved by the claimed invention is "useful, tangible, and concrete.""

Applicant asserts that amended independent method claims 1 and 12, and amended system claim 6, meet the "useful, tangible, and concrete" criteria discussed below, and are therefore patentable subject matter.

"Useful Result" Analysis

MPEP § 2106 IV C 2 (2) (a) states that:

"For an invention to be "useful" it must satisfy the utility requirement of section 101. The USPTO's official interpretation of the utility requirement provides that the utility of an invention has to be (i) specific, (ii) substantial and (iii) credible."

Applicant asserts that creating an XML payload from an XML list has utility that is specific, substantial, and credible. The XML payload produced by Applicants invention as claimed in independent claims 1, 6, and 12 reduces the computationally intensive load otherwise required when processing schema and an XML data file to create an XML payload for export.

"Tangible Result" Analysis

MPEP § 2106 IV C 2 (2) (b) states that:

"The tangible requirement does not necessarily mean that a claim must either be tied to a particular machine or apparatus or must operate to change articles or materials to a different state or thing. However, the tangible requirement does require that the claim must recite more than a 35 U.S.C. 101 judicial exception, in that the process claim must set forth a practical application of that judicial exception to produce a real-world result."

Applicant asserts that creating an XML payload from an XML list is a practical application and produces a real-world result. The XML payload that is created is suitable for export to a software application or as a web component to a web page.

"Concrete Result" Analysis

MPEP § 2106 IV C 2 (2) (c) states that:

"Another consideration is whether the invention produces a "concrete" result. Usually, this question arises when a result cannot be assured. In other words, the process must have a result that can be substantially repeatable or the process must substantially produce the same result again."

Applicant asserts that the disclosure shows how an XML payload can be created from any XML list, and that the process disclosed and claimed is repeatable and will produce the resulting XML payload time-after-time. Each resulting XML payload will be uniquely based upon the starting XML list, but every XML list processed will result in an XML payload that is suitable for export to a software application or as a web component to a web page.

Thus, Applicant believes that amended independent claims 1, 6, and 12 overcome the Examiners rejection under 35 U.S.C. § 101 and, accordingly, Applicant requests retraction of the Examiner's rejection of the claims.

Claims 2, 3, 5, 9-11, 13, and 15-23 depend directly or indirectly from independent claims 1, 6, or 12 and include all the elements and limitations thereof. As a result, and in light of the foregoing remarks concerning independent claims 1, 6, and 12, Applicant likewise believes that

claims 2, 3, 5, 9-11, 13, and 15-23 also overcome the Examiner's rejection under 35 U.S.C. § 101, and withdrawal of that rejection in respect to these claims is respectfully requested.

Allowable Subject Matter:

While Applicant agrees with the Examiner's statements as to why claims 1-3, 5, 6, 9-13, and 15-23 are allowable over the art of record, additional reasons for allowability may also exist.

CONCLUSION:

It is believed that no further fees are due with this Response. However, the Commissioner is hereby authorized to charge any deficiencies or credit any overpayment with respect to this patent application to deposit account number 13-2725.

In light of the above remarks and amendments, it is believed that the application is now in condition for allowance and such action is respectfully requested. Should any additional issues need to be resolved, the Examiner is requested to telephone the undersigned to attempt to resolve those issues.

Respectfully submitted,

Dated: April 2, 2007
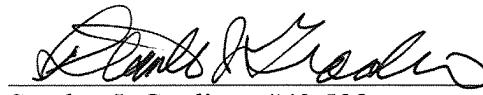
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